

## The Ukrainian government's strategy towards the opposition

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In recent months in Ukraine, there has been a toughening of measures targeted at opposition leaders, in particular the former Prime Minister Yulia Tymoshenko and the former interior minister Yuri Lutsenko. These two have been charged with abuses of office when in power. The way in which the criminal investigations are being conducted shows that these measures are actually meant to prevent the two politicians from conducting regular political activities, or at least to make this practically impossible for them. These actions are an element of the Party of Regions' long-term strategy, as it tries during the pre-election period to eliminate Yulia Tymoshenko from political life and weaken or even destroy her powerbase. Similar measures, although to a more limited extent, are being taken against other opposition groups.

These actions are leading to the lowering of democratic standards in Ukraine, although these are still much higher than in Belarus or Russia; this has been proved, among other things, by the militia's more restrained behaviour towards the protesters, and the fact that abuses of the law during the current investigations have not yet slipped into actual violations. The Ukrainian opposition is fragmented and disorganised; even the Yulia Tymoshenko Bloc is unable to stage a major campaign in defence of its leader. This allows the authorities to feel free to tighten their policy towards the opposition.

## The pre-election situation in Ukraine

After Viktor Yanukovich assumed power, the Party of Regions quickly and successfully formed a parliamentary majority and a government, extended the influence of the executive power over the judiciary, and restored the presidential-parliamentary system. All of these actions were accompanied by surprisingly feeble protests on the part of the opposition, whose weakness and lack of orientation were confirmed in the campaign preceding the local elections in autumn last year, in which the Party of Regions significantly increased its level of influence. The president's associates and the Party's top leadership considered this a stimulus to increase pressure on the Yulia Tymoshenko Bloc (the only opposition force that matters) and marginalise it before the parliamentary elections.

The amendment of the constitution has resulted in a legal dilemma: the current Verkhovna Rada (Ukrainian parliament) was elected for a five-year term, but according to a clause in the restored constitution, the term is now four years. According to the former version the parliamentary elections should be organised in autumn 2012; according to the latter, in spring 2011. The Party of Regions decided to amend the constitution once more, and has announced that the elections will take place in October 2012. In this way the ruling coalition will gain time to implement unpopular reforms, and at the same time win back public support for the Party of Regions. A poll carried out by the Razumkov Centre shows that the proportion of people who want to vote for the Party of Regions fell from 41.5% in May 2010 to 29.0% in November 2010, while declared support for President Yanukovich fell in the same period from 40% to 20% (no further polls have been taken).

## The case of Yulia Tymoshenko

After the local elections, the General Public Prosecutor's Office and other law enforcement bodies launched forceful actions against Yulia Tymoshenko. In December last year she was repeatedly summoned to appear at the General Public Prosecutor's Office for questioning, and on 20 December she was formally charged with abuse of power; a preventive measure

in the form of prohibition on leaving her city of residence was introduced. Earlier investigations had been made against her, a number of high officials from her government had been arrested (including the former environment minister Heorhiy Fylypchuk, the former head of the Ukrhazprom company Ivan Didenko, and the former head of the State Customs Service Anatoli Makarenko), and in October 2010

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an arrest warrant from Ukraine led to the detention of the former minister of the economy Bohdan Danylyshyn in the Czech Republic. All of these actions are meant mainly as attacks on the former prime minister.

The charge brought against Tymoshenko concerns the alleged illegal transfer of US\$300 mln, earned from the sale of CO<sub>2</sub> emission quotas to Japan, to finance old age and disability pensions (in line with the conditions of such transactions, the funds can be spent only on environmental investments agreed with the purchasing party). The former prime minister does not deny the charge, although she claims that the transfer was a kind of 'loan', and that the relevant funds were returned to the specific bank account. Members of the current government however argue that it was actually Prime Minister Azarov who 'returned' these funds. Irrespective of the facts, the legal qualification adopted by the prosecutor's office is striking: the cited article of the penal code refers to actions undertaken to obtain personal gain, which in this case is out of the question.

The prosecutor's office is conducting several other investigations concerning the abuse of power by Tymoshenko's government. These include the purchase of ambulances for the emergency medical service which are not fit for their purpose, and embezzlement associated with the purchase of flu vaccines. In the first case, an investigation against Tymoshenko was launched on 27 January, although in the second no personal charges have been brought so far.

The Ukrainian constitution does not contain provisions on constitutional liability, and so the charges made in relation to abuse of office by the highest-ranking state officials are being investigated by the prosecutor's offices and common courts. The constitution does not allow for combining the function of a member of parliament with a job in the offices of executive power

(including as prime minister and minister), and so dismissed members of the government, who hold no parliamentary immunity, can be tried in criminal proceedings. The Ukrainian constitution further stipulates that persons who have received a legally valid sentence for committing an intentional crime lose their right to stand in parliamentary elections.

Irrespective of the assessment of the charges, there is no doubt that in this case, the aim of the General Public Prosecutor's Office is to prevent Yulia Tymoshenko from conducting any political activity, and indirectly, to speed up the disintegration of her bloc. It is also beyond doubt that the prosecutor's office (which in Ukraine is not an independent state service) is following guidelines from the President's administration. The long-term aim of these actions seems to be removing Tymoshenko from political life by preventing her from running

for a parliamentary seat, as she is the only politician who can currently compete with President Viktor Yanukovich. This, however, would require a legally valid sentence to be passed on her, even if suspended.

According to a poll conducted by the Razumkov Centre, support for Yulia Tymoshenko fell from 17.6% in February 2010 to 10.1% in April 2010, and continued to hold around 10% until November (no later data are available). No other politician representing the Ukrainian opposition enjoyed

double-digit support at that time. Although Tymoshenko's image is clouded by the memory of the permanent political crisis while she was in power, she remains the most popular opposition leader, with the greatest number of supporters and the best powerbase. Polls analysing the support for political parties clearly show that it is only the Yulia Tymoshenko Bloc that could form an opposition grouping of any importance in the new parliament.

Concurrent actions aimed at destroying the Yulia Tymoshenko Bloc's structures across the country have been launched. Some time ago, several Bloc deputies joined the coalition forces, and in certain regions the conflicts within the party leadership circles (most probably fuelled by external influences) have led to a split and the forming of alternative leadership structures. The consolidation of the power held by the Party of Regions has led numerous entrepreneurs to withdraw their support for the Bloc. After the local elections many deputies and even mayors (including the mayor of Zaporizhia, Oleksandr Sin) who were in favour of the Bloc became supporters of the Party of Regions, officially or unofficially. The limitation of the actions that Tymoshenko can undertake facilitates these processes, as both the Bloc and its main force, the Fatherland (Bat'kivshchyna) party, are actually centred around one leader.

### The case of Yuri Lutsenko and others

On 27 December 2010, the former interior minister in the Tymoshenko government, Yuri Lutsenko, was detained on charges of abuse of power and breaking the law during the supervision of the investigation focused on the alleged poisoning of Viktor Yushchenko, involving the promotion of his driver to an important post, and the improper spending of state funds for celebrations marking Militia Day. The pretext for Lutsenko's detention was his repeated refusal to review the investigation files, and the arrest was performed in a spectacular way (early in the morning, when Lutsenko was walking his dog). The aim of this action was to speed up the destruction of his People's Self-Defence party, which currently enjoys minor public support, but could inspire civil unrest. However, the main motive behind the actions

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against Lutsenko seems to be revenge, by both deputy prime minister Boris Kolesnikov (who was detained in 2005 on an order issued by Lutsenko with insufficient grounds) and the top leadership of the interior ministry, who have always been hostile towards Lutsenko, as he was one of the leaders of the Orange Revolution.

Other cases of persecution against the opposition include the investigations carried out against the organisers of last year's protests by small businessmen who opposed the new fiscal law; the surprisingly large number of people arrested in connection with the destruction of the monument to Stalin in Zaporizhia on 31 December; and the arrest of the former justice minister Yevhen Korniychuk. The first case seems simplest: the mass questioning of the organisers and main attendees of the protest and the minor charges laid against some of them (such as damage to the paving caused when putting up their tents) are meant to discourage others from engaging in protests against certain economic and social developments, which is a prospect the state fears in the context of the gradual implementation of unpopular reforms.

In the second case, after the demolition of the Stalin monument erected by the local structure of the Communist Party of Ukraine, several members of two organisations, the Tryzub association and the Svoboda party, were arrested. The charges against the members of Tryzub are possibly justified, as the organisation admitted to having damaged the monument some time ago. However, the arrests of the members of the local organisation of the nationalist party Svoboda, which in the 2010 local elections also won a surprisingly

large number of votes in central Ukraine, seem to be an attempt to eradicate it from those regions, and at the same time is an element of 'regulating' the political scene before the upcoming elections.

In the third case, Korniychuk, who was arrested on 22 December and is suspected of breaking the law during public procurement procedures on legal services, is the leader of the Ukrainian Social Democratic Party (a marginal party which is a component of the Yulia Tymoshenko Bloc),

and at the same time the son-in-law of Vasyl Onopenko, the Chairman of the Supreme Court of Ukraine. According to Ukrainian commentators, this latter fact is the motive behind Korniychuk's arrest. Onopenko, who is a long-time collaborator of Yulia Tymoshenko, is continuing to prevent the Party of Regions from expanding its influence onto the country's highest judicial body, at least till the end of 2011, when his term in office expires. Unable to remove him from office, the Party of Regions by implementing judicial reform in 2010 has significantly reduced the Supreme Court's scope of competence. In the light of the current penal code, the grounds for Korniychuk's arrest are weak, and it does not seem to constitute an attempt to put pressure on Onopenko, but is rather just an act of malice.

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## Summary

Representatives of the Ukrainian government have denied that the events discussed above are acts of political repression, and claim that the country's prosecutor's offices are conducting over 160 corruption investigations, only a small number of which are cases against political figures. The charges of abuse of power and breaking the law by the country's top officials sound probable, particularly in the light of the fact that corruption in Ukraine is omnipresent, and a large portion of the law (including the public procurement regulations) encourages

corruption. What is questionable, however, is the fact that the criminal investigations are only being carried out against the politicians associated with the Yulia Tymoshenko Bloc, and not the Party of Regions or the parties related to it; their involvement in corruption scandals has been widely covered by the media. These cases include the illegal privatisation of a state residence to the benefit of Viktor Yanukovich (as the outgoing prime minister in 2007), during which several high officials actually broke the law. The charge of selective application of the law in the cases of corruption crimes in Ukraine is justified.

The opposition's evident impotence is a good omen for the authorities. The Yulia Tymoshenko Bloc has proved unable to stage any major protests in her defence; similarly, People's Self-

-Defence has failed to defend its leader. This encourages the authorities to continue the actions aimed at marginalising the opposition.

The Party of Regions has managed to revive the viewpoint which associates democracy with chaos and an uncertain future (popular in the early 1990s), and to use the general disappointment with the rule of Viktor Yushchenko and Yulia Tymoshenko to its advantage. The Yushchenko and

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Tymoshenko governments have been presented as "democratic" and are contrasted with the current government, "pragmatic" and efficient. In this way, the Party of Regions is increasing the social isolation of the main opposition parties

The question of whether the Ukrainian authorities will decide to bring the opposition leader to trial remains open. It is unlikely that she will be detained, as this might cause a surge in her popularity. A social reaction similar to the one in 2001 (when Yulia Tymoshenko was arrested after resigning as deputy prime minister, and the time she spent in custody brought her the status of a leader) is not very likely, yet the authorities must be taking it into consideration.

The falling standards of liberal democracy over the past year and the new Ukrainian government's efforts to create elements of 'guided democracy' are disturbing. So far, however, nothing suggests that a 'Putinisation' of Ukrainian political life, or the choice of the 'Belarusian way' are imminent. The Western countries have not questioned the democratic legitimacy of the Ukrainian government (as in the case of Belarus); the militia have responded to street protests in a restrained way, and the actions targeted at the opposition involve excessive use of detention, subjecting the detainees to unnecessary questioning, etc., but this is not real persecution. Finally, the actions aimed at disorganising the opposition, as much as they deserve criticism, fit into the rules of the political game which is largely acceptable in Ukraine. The most important observation to be made is that the political groups which currently hold power in Ukraine feel free to pursue their policies, which might result in the intensification of actions aimed at weakening the democratic mechanisms.



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